

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because an abstract must commence on a separate sheet of paper, preferably following the claims, under the heading "Abstract" or "Abstract of the Disclosure." The sheet or sheets presenting the abstract may not include other parts of the application or other material. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

2. Claims 1-11 are objected to because of the following informalities: the claims do not begin with an article such as "A" or "The". Appropriate correction is required.
3. Claim 7 is objected to because of the following informalities: The full name of the triglycerides should appear before their abbreviation.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-6 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 603 981 A1 (KLARENBEEK).

8. As to claims 1-6 and 9-11, KLARENBEEK discloses a method of preparing a heat-stable oil-in-water emulsion (i.e., a dispersion of oil droplets throughout a continuous phase of water) by (i) preparing an oil-in-water emulsion having an oil content of from 10 to 25 wt.% based on the total emulsion and a whey protein content of from 3 to 7 wt.% based on the total emulsion, (ii) adjusting the pH of this emulsion to a value higher than 6.5, (iii) heating the emulsion for a period of 0.5-5 minutes at a temperature of 75-140°C, (iv) cooling the emulsion to a temperature lower than 20°C, and (v) reducing the pH of the emulsion to a value between 4 and 5 to obtain a final

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product (see abstract). KLARENBEEK discloses at page 2, lines 47-50, that the emulsion can use a variety of fats or oils including vegetable and animal mixtures. The denatured protein to protein content can vary. KLARENBEEK also teaches that ash/protein content of the whey protein can range from 0.03 to 0.2 (page 3, lines 5-15). While KLARENBEEK does not specifically discuss the amount of denatured protein, protein and fat in terms of an overall ratio, KLARENBEEK discloses a composition having similar amounts of denatured protein, protein and fat.

9. KLARENBEEK discloses that the emulsion can be heated so long as the heating step leads to denaturation of the whey proteins but not to heat instability (page 2, lines 55-58). Additionally, KLARENBEEK teaches that the heat stability of the whey proteins in the emulsion prepared by the method according to the invention is such that this emulsion, even at relatively high protein contents, can be heated to temperatures above 75°C without the system becoming unstable. In view of the above, it would have been obvious to modify the time and temperature in which the emulsion is heated to denature whey proteins but not destabilize the composition.

10. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over KLARENBEEK as applied to claims 1-6 and 9-11 above, and further in view of (EP 0 560 429 A (LAMMERS)).

11. As to claims 7 and 8, KLARENBEEK discloses at page 2, lines 47-50, that the emulsion can use a variety of fats or oils such as vegetable fats. KLARENBEEK does not specifically discuss adding palm and/or coconut oils to the composition.

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12. LAMMERS discloses that the use of fats such as soybean oil, hardened soybean oil, palmkernel oil, hardened palmkernel oil, coconut oil, interesterified coconut oil, hardened coconut oil, palm oil, hardened palm oil, mixtures thereof, and interesterified (both chemically and enzymically) mixtures is desirable in food products. LAMMERS teaches that they improve the mouthfeel of a food product. Preferred fats consist at least 50 wt.% of lauric fats, such as the palm kernel or coconut fats or fractions thereof (pg. 2, lines 45-55).

13. Thus, it would have been obvious to one skilled in the art to add a combination of palmkernel oil and/or coconut fats to the KLARENBECK composition, as LAMMERS teaches that the addition of these fats contribute to a product having a good mouthfeel.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP DUBOIS whose telephone number is (571) 272-6107. The examiner can normally be reached on Monday-Friday from 9:30am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PHILIP DUBOIS/  
Examiner, Art Unit 1781

/Keith D. Hendricks/  
Supervisory Patent Examiner, Art Unit 1781